

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs January 27, 2010

STATE OF TENNESSEE v. RAYFIELD MARTIN, JR.

Appeal from the Criminal Court for Hamilton County
Nos. 258132, 261540, 261877, & 263790 Rebecca J. Stern, Judge

No. E2009-01596-CCA-R3-CD - Filed March 9, 2010

The Defendant, Rayfield Martin, Jr., appeals the Hamilton County Criminal Court's revocation of probation for his various convictions upon guilty pleas for two offenses of possession of less than one-half gram cocaine with intent to sell, a Class C felony; criminal simulation, a Class E felony; theft of property valued over \$500, a Class E felony; and burglary, a Class E felony. On December 14, 2006, the Defendant was sentenced to an effective six years' probation for the possession and criminal simulation convictions. On May 23, 2007, he was sentenced to an effective two years' probation for the theft and burglary convictions, to be served consecutively to the convictions for possession. The Defendant contends that the trial court erred by revoking his probation and by not ordering alternative sentencing. We affirm the judgments of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Criminal Court Affirmed

JOSEPH M. TIPTON, P.J., delivered the opinion of the Court, in which NORMA MCGEE OGLE and D. KELLY THOMAS, JR., JJ., joined.

Ardena J. Garth, District Public Defender, and Richard Kenneth Mabee, Assistant Public Defender, for the appellant, Rayfield Martin, Jr.

Robert E. Cooper, Jr., Attorney General and Reporter; Matthew Bryant Haskell, Assistant Attorney General; William H. Cox, III, District Attorney General; and William H. Hall, Assistant District Attorney General, for the appellee, State of Tennessee

OPINION

On December 14, 2006, the Defendant was sentenced to three years' probation for possession of less than one-half gram of cocaine, to three years' probation for possession of cocaine with the intent to sell, and to two years' probation for criminal simulation. The

sentences for the drug convictions were ordered to be served consecutively, for an effective six years' probation. The Defendant's probation was revoked on May 23, 2007, because he acquired new charges, because he failed to report his arrest to his probation officer, and because he tested positive for cocaine and marijuana. He was ordered to serve six months and returned to intensive supervised probation. On the same day, the Defendant pled guilty to theft and to burglary of an automobile, both Class E felonies, for which he was sentenced to two years' probation each, to be served consecutively to his December 14, 2006, sentences. The revocation of probation for these convictions form the basis of the Defendant's appeal.

In June 2007, the Defendant was arrested for possession of burglary tools and for evading arrest, and his probation for the December 14, 2006 sentences was revoked for a second time on November 5, 2007. He was ordered incarcerated until February 14, 2008, and then he was released on supervised probation for the balance of his sentences. On February 4, 2009, the Defendant was arrested for burglary, evading arrest, possession of a controlled substance, possession of burglary tools, and possession of drug paraphernalia. A third probation violation warrant was filed, alleging violations of the Defendant's December 14, 2006, and May 23, 2007, probation sentences.

At the revocation hearing, Nina Kyle, the Defendant's probation officer testified that the Defendant acquired new charges while on probation and that other charges had been bound over to the grand jury. Ms. Kyle said that police had arrested the Defendant for attempting to break into an automobile and that he did not report those charges to her. She said the Defendant had difficulty reporting to her. She said that the Defendant did not qualify for a fee waiver because he would not verify that he received social security benefits. She said that he failed an April 2009 drug screen by testing positive for cocaine and marijuana.

On cross-examination, Ms. Kyle testified that although the Defendant alleged that he had learning disabilities, he had not provided documentation to support this allegation. She said that she was unaware that the Defendant attended the Orange Grove Center, which treats people with intellectual disabilities. She clarified that the Defendant had not been arrested in the act of breaking into an automobile but that he had been arrested fleeing from the scene of the alleged automobile burglary. She admitted that the Defendant had not been convicted of the most recent charges.

The Defendant testified that he received disability benefits because he could not read or write and because he attended the Orange Grove Center. He said he had a hard time remembering appointments. He admitted that he had a drug problem and stated that he would be willing to receive drug treatment. When asked, he agreed he was innocent of the new charges, and he affirmed that he was not caught breaking into the car because he was

a couple of blocks away. On cross-examination, the Defendant testified that this was his third probation violation. When asked why he did not seek drug assistance as ordered by the trial court, he responded that no one told him he had to attend drug treatment classes. He would not agree that he had been charged previously with possession of drug paraphernalia.

The trial court found that the Defendant had acquired new charges which he did not report to his probation officer, that he had failed drug screens for cocaine and marijuana, and that he had not paid his fees and fines. The court revoked the Defendant's probation and ordered all his sentences into execution.

On appeal, the Defendant contends that the trial court erred in revoking his probation and in imposing incarceration without considering alternative sentencing, such as community corrections. The State contends that the trial court properly revoked the Defendant's probation after he was arrested on new charges and failed a drug test. We agree with the State.

A trial court may revoke probation upon its finding by a preponderance of the evidence that a violation of the conditions of probation has occurred. T.C.A. § 40-35-311(e). If a trial court revokes a defendant's probation, its options include ordering confinement, ordering the sentence into execution as originally entered, returning the defendant to probation on modified conditions as appropriate, or extending the defendant's period of probation by up to two years. T.C.A. §§ 40-35-308(a), (c), -310; see State v. Hunter, 1 S.W.3d 643, 648 (Tenn. 1999). The judgment of the trial court in a revocation proceeding will not be disturbed on appeal unless it appears that there has been an abuse of discretion. See State v. Williamson, 619 S.W.2d 145, 146 (Tenn. Crim. App. 1981).

The trial court did not abuse its discretion in revoking probation. Although the Defendant claims the trial court should have considered a community corrections sentence because of his disabilities, the trial court was under no obligation to do so. The Defendant admitted to repeated probation violations. He acquired new charges, failed to report those charges to his probation officer, and failed drug tests, all in violation of the provisions of his probation.

In consideration of the foregoing and the record as a whole, we affirm the judgments of the trial court.

JOSEPH M. TIPTON, PRESIDING JUDGE